

(1) Donovan Crawford  
(2) Regardless Limited and  
(3) Alma Crawford

*Appellants*

v.

**Financial Institutions Services Limited**

*Respondent*

FROM

**THE COURT OF APPEAL OF JAMAICA**

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JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL UPON A  
PETITION FOR SPECIAL LEAVE TO APPEAL

Delivered the 6th February 2003

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*Present at the hearing:-*

Lord Hutton  
Lord Hobhouse of Woodborough  
Lord Scott of Foscote

*[Delivered by Lord Scott of Foscote]*

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1. There is before their Lordships a petition for special leave to appeal to Her Majesty in Council from a judgment of the Court of Appeal of Jamaica dated 31 July 2001. The petitioners are Donovan Crawford, Regardless Ltd and Alma Crawford, the defendants in the proceedings at trial and the appellants in the Court of Appeal. It is necessary to set out, in fairly summary form, the events and circumstances which have led to this petition for special leave to appeal.

2. The petitioners (and others) were defendants in civil proceedings in the Supreme Court of Jamaica in which a company, Financial Services Institution Limited, was plaintiff. The trial of the action took place before the Chief Justice of Jamaica who, on 25 May 1999, gave judgment for the plaintiff (a) against the 1st and 3rd petitioners, for J\$703,393,931.94 with interest at J\$105,443.78 per day from 21 September 1998; (b) against the 1st petitioner (and others), for a number of lesser, though still substantial, sums; and (c) against the 2nd petitioner, for a declaration that the plaintiff was the beneficial owner of certain premises

and an order that the 2nd petitioner transfer the premises to the plaintiff on demand.

3. The petitioners appealed to the Court of Appeal. The appeal was dismissed with costs on 31 July 2001.

4. The Constitution of Jamaica is established under the Jamaica (Constitution) Order in Council 1962 ("the Constitution Order"). Section 110(1)(a) of the Constitution Order provides as follows:

"(1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases –

- (a) where the matter in dispute on the appeal to Her Majesty in Council is of the value of one thousand dollars or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of one thousand dollars or upwards, final decisions in any civil proceedings;

..."

5. An appeal by the petitioners to Her Majesty in Council against the order of the Court of Appeal of 31 July 2001 falls within section 110(1)(a) of the Constitution Order.

6. Section 110 of the Constitution Order came into effect immediately before 6 August 1962. The Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962 ("The Privy Council Appeals Procedure Order"), too, was expressed to come into effect immediately before 6 August 1962.

7. Sections 3, 4, 5 and 6 of the Privy Council Appeals Procedure Order are relevant to the issues arising on this petition for special leave. The sections provide as follows:

"3. Applications to the Court for leave to appeal shall be made by motion or petition within twenty-one days of the date of the judgment to be appealed from, and the applicant shall give all other parties concerned notice of his intended application.

4. Leave to appeal to Her Majesty in Council in pursuance of the provisions of any law relating to such appeals shall, in the first instance, be granted by the Court only –

- (a) upon condition of the appellant, within a period to be fixed by the Court but not exceeding ninety days from the date of the hearing

of the application for leave to appeal, entering into good and sufficient security to the satisfaction of the Court in a sum not exceeding £500 sterling for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay costs of the appeal (as the case may be); and

- (b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purposes of procuring the preparation of the record and the despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

5. A single judge of the Court shall have power and jurisdiction –

- (a) to hear and determine any application to the Court for leave to appeal in any case where under any provision of law an appeal lies as of right from a decision of the Court;
- (b) generally in respect of any appeal pending before Her Majesty in Council, to make such order and to give such other directions as he shall consider the interests of justice or circumstances of the case require:

Provided that any order, directions or decision made or given in pursuance of this section may be varied, discharged or reversed by the Court when consisting of three judges which may include the judge who made or gave the order, directions or decision.

6. Where the judgment appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council shall think fit to make thereon.”

8. On 17 August 2001 the petitioners issued notice that the Court of Appeal would be moved on 8 October 2001 for a grant of leave to appeal to the Privy Council against the Court of Appeal order of 31 July 2001.

9. On 8 October 2001, pursuant to the aforementioned Notice of Motion, the Court of Appeal (sitting as a three judge court) granted conditional leave to appeal to the Privy Council and ordered that the “judgment herein be stayed pending the outcome of the Appeal to Her Majesty in Council”. The conditions to which the leave to appeal was subject were:

(a) that within 90 days the petitioners enter into good and sufficient security in the sum of one thousand dollars for the due prosecution of the appeal and the payment of costs, and

(b) that within the same period the petitioners take all necessary steps for the preparation of the record and the dispatch thereof to England.

10. On an application dated 25 January 2002 made by the respondent, Financial Institution Services Limited, to a single judge of the Court of Appeal, Downer JA ordered on 12 February 2002 that (i) all proceedings in the petitioners’ appeal to the Privy Council be stayed until the petitioners pay the respondent a sum of J\$631,883.33 in respect of the respondent’s costs notified as payable in the Supreme Court and the Court of Appeal, and (ii) the respondent have liberty to apply to the Court of Appeal after 30 days from the date thereof for the variation or discharge of the partial stay of execution ordered by the court on 8 October 2001 in the event of the said sum being then unpaid.

11. On 22 April 2002 the Court of Appeal (sitting as a three judge court) ordered that

(i) the order of Downer JA made on 12 February 2002 do not come into effect until 60 days from the date hereof, and

(ii) that the proceedings be further stayed until payment of costs by the petitioners within 60 days.

12. On 18 November 2002 the Court of Appeal (sitting as a three judge court) ordered

(i) that the conditional leave to appeal to the Privy Council granted on 8 October 2001 be rescinded; and

(ii) that the stay of execution granted on the same date be discharged.

13. The petition for special leave to appeal was issued on 11th November 2002. Neither in the written submissions to their Lordships nor in the oral submissions of counsel has there been any attempt to address the merits of the petitioners’ proposed appeal.

14. The events and circumstances referred to appear to their Lordships to give rise to the following preliminary issues on which a decision is needed before the petition for special leave to appeal can usefully be addressed:

(i) Where a party has an appeal as of right to the Privy Council under section 110(1)(a) of the Constitution Order, what powers, if any, does the Court of Appeal in Jamaica have (whether by a single judge or a three judge court), under the Privy Council Appeals Order or otherwise, to restrict or impose terms upon the exercise of that right of appeal.

(ii) Does section 5 of the Privy Council Appeals Procedure Order enable either the single judge there mentioned, or the Court of Appeal sitting as a three judge court, to impose conditions on the grant of leave to appeal, or on the right to prosecute an appeal for which leave to appeal has been granted, additional to conditions falling within paragraphs (a) or (b) of section 4?

(iii) Did Downer JA have power by his order of 12 February 2002 to stay the petitioners' appeal to the Privy Council pending payment of the costs therein mentioned?

(iv) Did the Court of Appeal have power by its order of 22 April to stay the said appeal as therein directed?

(v) If Downer JA and/or the Court of Appeal did not have power to stay the said appeal as directed in the said orders, does the original grant of conditional leave to appeal stand or is it necessary for the petitioners to apply to the Privy Council for special leave to appeal?

(vi) If an application for special leave to appeal is made to the Privy Council in a case to which section 110(1)(a) of the Constitution Order applies, can the Privy Council dismiss the application on the ground that the merits of the appeal do not warrant the grant of leave?

These issues ought, in their Lordships' opinion, to be dealt with by a full Board.

15. It appears to their Lordships that there are two Privy Council cases in which dicta are to be found that bear upon the issues formulated in paragraph 13 or on some of those issues, namely *Lopes v Valliappa Chettiar* [1968] AC 887 and *Electrotec Services Ltd v Issa Nicholas (Grenada) Ltd* [1998] 1 WLR 202.

16. In these circumstances their Lordships propose to adjourn the petition to come before a full Board in order for answers to be given to the said issues.

Depending on the answers directions may then need to be given for the final disposal of the petition.

17. The costs of the hearing before their Lordships on Tuesday 14 January 2003 will be reserved.